

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
JOHN A. DIOGO dba ABEL
ROOFING & PAINTING CO

Appellant,

v

PUGET SOUND AIR POLLUTION
CONTROL AGENCY

Respondent,

PCHB No. 993

RULING ON MOTION AND
FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

Respondent's motion to dismiss this appeal is denied.

This matter, the appeal of a \$50.00 civil penalty for an alleged opacity violation of Respondent's Section 9.03 of Regulation 1, came on for hearing before the Pollution Control Hearings Board (Chris Smith, Chairman and Art Brown, Member) convened at the Seattle facility of the State Board Industrial Insurance Appeals on June 24, 1976. William A. Harrison, Hearing Examiner, presided. Respondent elected a formal hearing.

Appellant, John A Diogo, appeared per se, Respondent

1 appeared by and through its attorney, Keith D McGoffin Olympia
2 Court Reporter, Juana Tingdale, recorded the proceedings.

3 Witnesses were sworn and testified Exhibits were
4 admitted From testimony heard and exhibits examined, the
5 Pollution Control Hearings Board makes these

6 FINDINGS OF FACT

7 I

8 Pursuant to RCW 43.21B.260 Respondent has filed its
9 Regulation 1 with the Pollution Control Hearings Board and
10 official notice thereof is hereby taken The Appellant is said
11 to have violated Section 9 03(b) of Regulation 1 which reads as
12 follows

13 "After July 1, 1975 it shall be unlawful
14 for any person to cause or allow the emission
15 of any air contaminant for a period or periods
16 aggregating more than three (3) minutes in any
17 one hour, which is
18 (1) Darker in shade than that designated as
19 No 1 (20% density) on the Ringelmann Chart, as
20 published by the United States Bureau of Mines,
21 or
22 (2) Of such opacity as to obscure an observer's
23 view to a degree equal to or greater than does
24 smoke described in subsection 9.03(b)(1). ."

20 II

21 Appellant does business as Abel Roofing & Painting Co.
22 and as such is the owner of the tar pot in question, and was so
23 at all times relevant to this appeal.

24 III

25 On January 19, 1976 Appellant caused or allowed an
26 RULING ON MOTION AND
27 FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
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1 emission of an air contaminant, hydrocarbon particulate, for a
2 duration of seven (7) minutes with an opacity equal to No. 4
3 on the Ringelmann Chart Such emission emanated from a tar pot
4 which was located near the Moore Theater while roofing of Haddon
5 Hall (1921 3rd Ave., Seattle, Washington) was occurring.

6 IV.

7 The tar pot lid had been left open for extended periods
8 of time in order to allow the pot to be easily charged with asphalt
9 as well as easily allowing the filling of tar buckets.

10 V.

11 While the facts stated in this paragraph do not bear
12 upon whether the Appellant committed this violation or not, we
13 find that modern equipment is available which would allow both
14 charging the tar pot with asphalt and removing the hot liquid
15 without opening the tar pot. We find further that leaving the
16 tar pot lid closed except when actually charging with asphalt or
17 when actually filling a bucket would substantially reduce the
18 possibility of an air pollution violation This is so even as-
19 suming that some contaminant would escape through a proper
20 safety valve which must relieve the pressure inside the tar pot
21 when the lid is closed

22 VI

23 Any Conclusion of Law hereinafter recited which should
24 be deemed a Finding of Fact is hereby adopted as such.

25 RULING ON MOTION AND
26 FINAL FINDINGS OF FACT,
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AND ORDER - 3

1 CONCLUSIONS OF LAW

2 I.

3 Appellant has violated Section 9.03 of Respondent's
4 Regulation 1

5 II

6 Any Finding of Fact which should be deemed a Conclusion
7 of Law is hereby adopted as such

8 ORDER

9 The violation and civil penalty by Notice and Order of
10 Civil Penalty No 2680 are each hereby affirmed

11 DATED this 16th day of July, 1976

12 POLLUTION CONTROL HEARINGS BOARD

13
14 Chris Smith
Chris Smith, Chairman

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16 Art Brown
17 Art Brown, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER - 4